

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

UNITED STATES,

Case No.: 17-cr-20595

Plaintiff,

Hon. JUDGE VICTORIA ROBERTS

v.

YOUSEF RAMADAN,

Defendant.

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MOTION FOR PERMISSION TO APPEAR PRO HAC VICE

Pursuant to the Criminal Justice Act and Criminal Justice Act Plan, Nabih H. Ayad, on behalf of Defendant Yousef Ramadan, hereby motions this Honorable Court to enter an order granting attorney Nabih H. Ayad permission to appear *pro hac vice* and participate as counsel in the above-captioned case on behalf of Yousef Ramadan.

In accordance with LR 7.1(a), this counsel has sought concurrence with the government and they have no objection to Mr. Ayad defending Mr. Ramadan as a *pro hac vice* member of the Criminal Justice Act panel so long as Mr. Richard D.

Korn is allowed to remain as counsel for Mr. Ramadan. The government does, however, object to Mr. Ayad substituting Mr. Korn as counsel.

This counsel relies on the attached brief in support of this Motion.

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Dated: March 6, 2020

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**BRIEF IN SUPPORT OF DEFENDANT'S
MOTION FOR PERMISSION TO APPEAR PRO HAC VICE**

Mr. Nabih H. Ayad states the following in support of this Motion for Permission to Appear Pro Hac Vice:

PRELIMINARY STATEMENT

This counsel is very familiar with the rules and did not intend to intentionally omit any requirements from their prior motion. This counsel was simply under the impression that LR 7.1 did not apply in this situation as the movant is not actually a party to the current action yet.

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STATEMENT OF ISSUE

1. Does the CJA allow for the appointment of non-panel defense attorneys to participate *pro hac vice* under exceptional circumstances?

Defendant's answer: Yes.

The government's answer: Yes.

2. Does Mr. Ramadan's case constitute an exceptional circumstance under the CJA, favoring the appointment of Mr. Ayad as his counsel, *pro hac vice*?

Defendant's answer: Yes.

The government's answer: Only if Mr. Ayad will be second-chair to Mr. Korn.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Revised Plan for Implementing the Criminal Justice Act of 1964, As Amended, 18 USC § 3006A (MI R USDCTED CJA Plan(III)(A)(4)) p. 6

United States v Serhan, unpublished opinion of the Court of Appeals, issued August, 17, 2015 (Docket No. 14-20685), 2015 WL 4886578, p *3 p. 9

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CONCISE STATEMENT OF FACTS

1. Defendant was indicted on September 7, 2017 with two counts of illegally possessing a firearm pursuant to 18 USC § 922(k) in 2017.

2. 18 USC § 922(k) states in whole:

It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

3. Defendant is accused of keeping two handguns, which were not manufactured in Michigan, and with allegedly altered and/or removed serial numbers in a storage unit, in violation of 18 USC § 922(k).

4. **Defendant has been incarcerated for almost two and a half years without trial, since his arrest in late August of 2017.**

5. Defendant is a native of Israel/Palestine, an Arab, and a Muslim.

6. Defendant first language is Arabic.

7. Defendant has requested the help of an attorney who can speak with him in his native language and who understands Arab culture.

LAW AND ARGUMENT

I. The controlling law in this Case favors Mr. Nabih H. Ayad's appointment as *pro hac vice* defense counsel for Defendant Ramadan.

The Criminal Justice Act Plan, Section (III)(A)(4), makes it clear that an attorney may be appointed to serve as a *pro hac vice* member of the CJA panel for a single case, when a district court judge finds such appointment appropriate. The CJA Plan states in pertinent part:

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in this district, should possess such qualities as would qualify him or her for admission to this district's CJA panel in the ordinary course of panel selection. Notice of such appointment shall be sent to the Clerk of Court at the time of the appointment.

MI R USDCTED CJA Plan (III)(A)(4) (emphasis added).

For the reasons discussed below, the CJA Plan favors the appointment of Mr. Nabih H. Ayad as counsel for Mr. Yousef Ramadan. This is both because Mr. Ayad is a highly skilled and qualified federal criminal defense trial attorney and because Defendant Ramandan will not be adequately represented under the Sixth Amendment if he cannot accurately and efficiently communicate with his attorney.

Here, Mr. Ramadan is an Arab who's first language is Arabic, and Mr. Ayad will be able to speak clearly with him as Mr. Ayad is also an Arab who speaks Arabic.

a. Mr. Nabih H. Ayad is more than qualified to represent Defendant Yousef Ramadan and to participate as a member of the CJA panel.

This counsel has reviewed the Application for admittance to the CJA Panel Attorney Program for the Eastern District of Michigan and meets all of the required qualifications listed on the application form.

Attorney Nabih H. Ayad is a member, in good standing, of the Michigan Bar and has been for over 20 years. He has practiced federal criminal defense for the vast majority of that time, and his practice at Ayad Law, PLLC consist of a high percentage of federal criminal cases. (Approximately 25-33%.) According to Westlaw Analytics, Attorney Ayad has been counsel on over 270 cases, 182 of which have been either in federal district court or federal circuit court. Needless to say, Mr. Ayad has served as a defense attorney on many federal criminal cases of many different kinds, and many of those have proceeded to trial with Mr. Ayad arguing before the judge.¹

The following is a list of the jurisdictions in which Nabih H. Ayad has been licensed to practice law, including dates of admission to practice, resignation, or retirement, and any available attorney registration numbers:

¹ Mr. Ayad previously applied for a position on the CJA Defenders panel for the district of Detroit, approximately five years ago. Mr. Ayad's application was not accepted at that time, for unknown reasons. Mr. Ayad no longer has the letter from the CJA Defenders panel.

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1. State of Michigan, on April 25, 1999;
2. United States District Court for the Southern District of New York
(pro hac vice, Case NO 11-CIV-9186, CASE NO 12-MAG-693);
3. United States District Court for the Northern District of Illinois on March 25, 2011;
4. United States Supreme Court; on August 12, 2007;
5. 6th Circuit Court of Appeals; on April 4, 2000;
6. 7th Circuit Court of Appeals; on July 16, 2010;
7. 9th Circuit Court of Appeals; on May 20, 2010;
8. 11th Circuit Court of Appeals; on June 15, 2007;
9. United States District Court for the Eastern District of Michigan; in 1999;
10. United States District Court for the Western District of Michigan, on April 17, 2006; and
11. United States District Court for the Eastern District of Pennsylvania.

The most recent federal criminal case in which Mr. Ayad proceeded to trial was *United States v Al-Jumail* (2:12-cr-20272). The most recent federal criminal case Mr. Ayad has argued in is *United States v Makki*, (2:19-cr-20176) before the honorable Judge Linda V. Parker. A case in which Mr. Ayad was brought on as co-counsel for a limited purpose only. Prior to that, Mr. Ayad was the defender in *United States v Boussi* (2:17-cr-20302), a case in which Mr. Ayad's client was charged with 31 felonies for which were all dismissed.

The only disciplinary action taken against Mr. Ayad was by the Michigan Bar after Ayad Law, PLLC's recently hired secretary accidentally wrote a check from Ayad Law, PLLC's IOLTA account instead of its business bank account, and the check bounced. When this occurs, the bank automatically notifies the attorney grievance commission, which then grieved Mr. Ayad. There was no aggrieved party.

As to the judges that Mr. Ayad has practiced before, he can recollect: Judge George Caram Steeh, Judge Avern Cohn, Judge Arnold Tarnow, Judge Denise Page Hood, Judge Nancy Edmonds, Judge Gerald Rosen, Judge Victoria Roberts, Judge Robert Cleland, Judge Sean Cox, Judge Andrew Littman, Judge Gershwin Drain, Judge Mark Goldsmith, Judge Paul Borman, Judge Linda Parker, Judge Patrick Duggan, Judge Terrence Berg, Judge Stephen Murphy, Judge Marianne O. Battani, and Judge Judith Levy.

b. Extraordinary circumstances permit and, in fact favor, Mr. Ayad's appointment as counsel for Mr. Ramadan.

Despite this counsel's diligent efforts, they were only able to find a single case dealing with a non-bankruptcy CJA *pro hac vice* appointment in the Sixth Circuit: *United States v Serhan*, unpublished opinion of the Court of Appeals, issued August, 17, 2015 (Docket No. 14-20685), 2015 WL 4886578. (**Attached at Exhibit A.**)

Based on defense counsel's submissions and arguments before the Court, it appears current counsel is sufficiently knowledgeable of the procedures and rules in this District and under federal law. In this instance, there exists exceptional circumstances since Serhan trial is scheduled for October 2015, a little over two months away. Serhan has been represented by current counsel since December 2014 and it

appears that Serhan is satisfied with defense counsel's representation of Serhan. The Court finds in this instance that it is in the interest of justice, judicial economy and continuity of representation for current retained counsel to be appointed under the CJA. The Court grants Defendant's Motion to Appoint Counsel Pursuant to the CJA.

Id., p *3 (Ex. A).

This case makes clear that the extraordinary circumstances need not be extreme circumstances, simply extra-ordinary, as the CJA Plan plainly states. In fact, in that case, the defense attorney was appointed *pro hac vice* simply because they were their chosen attorney whom they had been paying, prior to expending all of their funds and because trial was approximately two months away. (Approximately, because in that same opinion, the judge ordered the trial date adjourned.)

Mr. Ayad's practice focuses heavily on civil rights criminal law and Mr. Ayad was even recognized by the United States Attorney's office for his work serving as co-chair on the BRIDGES organization for civil rights. Here, Defendant Ramadan has been incarcerated without bond or conviction for well over two years on a simple illegal possession of firearms charge. The length of Mr. Ramadan's detention raises concerns regarding his civil rights as a protected minority which should be counseled to by an experienced civil rights attorney such as Mr. Ayad.

Finally, Defendant is a native Arabic speaker, and he is not getting adequate representation if he is unable to communicate efficiently and without any errors owing to any language or cultural barriers. Mr. Ayad is also fluent in Arabic and will be able to communicate well with the Defendant, Mr. Ramadan, in his native tongue

and as someone who understands Mr. Ramadan's statements from a cultural standpoint as well.

Because Defendant has been in custody for over 2 and a half years on these false charges, he no longer trusts the criminal justice system or its attorneys, except for Mr. Ayad due to his lengthy work fighting for the Arab and Muslim cause in the region.

CONCLUSION AND RELIEF REQUESTED

In seeking concurrence for this Motion, the government's attorneys indicated to this counsel that they would not object to the appointment of Mr. Ayad, *pro hac vice*, as defense counsel for Defendant, so long as Mr. Richard Korn would remain on the case in his current capacity. Although neither Defendant Ramadan, Mr. Korn, or Defendant have any objection to both Mr. Ayad and Mr. Korn representing Mr. Ramadan, should the Court choose that option, if this Court decides not to appoint Mr. Ayad as co-counsel, then Mr. Ayad should be substituted as counsel for Defendant, in place of Mr. Richard Korn. Mr. Korn has already submitted a concurrence to his substitution by Mr. Ayad (ECF No. 175).

WHEREFORE, the undersigned humbly requests that this Court grant his motion for *pro hac vice* admission to practice as defense counsel for Mr. Yousef Ramadan in the above-caption case only.

Respectfully submitted,

s/Nabih H. Ayad

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CEERTIFICATE OF SERVICE

I hereby certify that on March 6, 2020, I filed via the electronic filing system the foregoing Motion for *Pro Hac Vice* Admission, and any attachments, with the Clerk of the Court and served the same via First Class US Mail copies of the same on the following parties:

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